



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1991

Mr. Howard F. Meyer
Assistant District Attorney
Office of the District Attorney
P. O. Box 1748
Austin, Texas 78767

OR91-568

Dear Mr. Meyer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13674.


You state that the Travis County District Attorney received an open records request for a "DWI video tape" pertaining to a pending criminal matter and that "[s]ince the case is indicted, our office is not in the position to release this key piece of evidence because it is relevant to the prosecution of this case and would hurt our position in its litigation." You have not submitted to this office a copy of the requested material or of the written request you received, despite the fact that we previously asked you to do so. Nor have you raised any specific exceptions to required public disclosure listed in section 3(a) of the Open Records Act as previously requested.

Although an exception to disclosure is normally waived if not explicitly raised, this office has concluded that for purposes of section 7(a) you have sufficiently evoked the protection of section 3(a)(3), the litigation exception. To secure the protection of section 3(a)(3), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). Because the felony criminal proceedings in this case are pending, the video tape, which will be used as evidence, comes under the protection of section 3(a)(3).

We assume, however, that the video tape has not previously been made available to the criminal defendant. Absent special circumstances, once information has been obtained by all parties to the litigation, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the requestor has seen or had access to the tape in question, *e.g.*, during discovery or otherwise, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-568.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/RWP/lcd

Ref.: ID# 13674

cc: Valerie Williams
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